IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1628 of 2007
To
FIRST APPEAL No. 1630 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE EXECUTIVE ENGINEER & 1 - Appellant(s)
Versus
THAKOR PRADHANJI SURSANGJI - Defendant(s)

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Appearance :
MR SATYAM CHHAYA, AGP for Appellant(s) : 1 - 2.
MR AMIT C NANAVATI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 12/04/2007

ORAL JUDGMENT

1. The short facts of the case appears to be that the proposals were made for acquisition of the

lands for Narmada Canal Project Unit 18, Mehsana for the lands situated at Village Tejpura. Thereafter, the notification was published under Section 4 of the Land Acquisition Act (hereinafter referred to as “the Act”) on 10.2.1995 in the Government Gazette. The notification under Section 6 of the Act was published on 29.6.1995 and the proceedings under Section 9 of the Act were initiated by the Land Acquisition Officer (hereinafter referred to “LAO”). Thereafter the award came to be passed on 1.11.1996 by the Special LAO and he awarded the compensation at the rate of Rs.1.10 per sq. mtr., for non-irrigated land and Rs.1.65 per sq. mtr., for irrigated land (Rs.11,000/- per hectre for non-irrigated land and Rs.16,500/- per hectre for irrigated land). The land owner/claimants were not satisfied with the compensation award by the LAO and, therefore, the disputes were raised, which ultimately came to be referred to the Reference Court for adjudication being Reference Cases No.2684/2003 to 2686/2003. The Reference Court, during the

course of the adjudication and ultimately while passing the judgement, relied upon its earlier decision in Land Reference Cases No.134/1997 to 145/1997 for the land acquired in the very village Virsoda, for which the additional amount of market value was fixed at Rs.15.40 per sq. mtr. It has also relied upon its earlier decision in Reference Cases No.1073/1997 to 1081/1997 for the land acquired of Village Tejpura. The Reference Court found that the notification in the reference cases No.1073/1997 to 1081/1997 was of Feb., 1995 and so was in the present case and, therefore, ultimately applied the same yardstick for assessment of the market value and concluded that the market value of the land would be Rs.17/- per sq. mtrs. and thereafter passed the judgement and award on 7.5.2005. It is under these circumstances, the present appeals.

2. Heard Mr.Chhaya, learned AGP for the State appellant and Mr.Nanavati, learned Counsel for the original claimant. Considered the record and proceedings of the Reference Court.

3. It appears that there is no dispute on the point that earlier Land Reference Cases No.1073 of 1997 to 1081 of 1997, which were decided on 15.2.2001 by the Reference Court and on the basis of which the present impugned award came to be passed, were pertaining to the very village Tejpur. There is also no dispute on the point that the notification under Section 4 of the Act in the said case was of 3.2.1995, whereas in the present case the notification under Section 4 is published on 10.2.1995, therefore, the same month and year of 1995. There is also no dispute for the proximity of the land situated in the very village. Therefore, if the Reference Court has relied upon its earlier award for the very land situated in the very village in the nearby proximity, it cannot be said that any error is committed by the Reference Court while assessing the market value and passing the award.

4. The aforesaid is coupled with the circumstances that the decision of the Reference Court in land Reference Cases No.1073 of 1997 to 18081 of 1997

was carried before this Court in the proceedings of First Appeal No.888 of 2004 to 896 of 2004 and others and it came up before the Division Bench of this Court (Coram: K.R. Vyas and K.S. Jhaveri, J.J.) and this Court as per its order dated 4.5.2004 has not interfered with the assessment of the market value made by the Reference Court. Therefore, for the market value of Rs.17/- per sq. mtrs., for the land at village Tejpura, the decision of the Reference Court is confirmed, by this Court.

5. However, it appears that the Reference Court in the impugned award has lost sight of the important aspect of the difference in the valuation between a irrigated land and non-irrigated land. If the valuation of the irrigated land is assessed as Rs.17/- per sq. mtrs., valuation for non-irrigated land would not be the same. It is by now settled that the valuation of the irrigated land would be higher by 25% in comparison to the valuation of the non-irrigated land. The reference may be made to the decision of the Apex Court in case of

Kantaben v. Special Land Acquisition Officer", reported in AIR 1990 SC, 103. Therefore, if the same principles are applied, the consequence would be that for irrigated land, if the valuation is of Rs.17/- per sq. mtrs., then for non-irrigated land the valuation would Rs.12.75 per sq. mtrs.

6. It may be recorded that Mr.Nanavati, learned Counsel appearing for the original claimant during the course of the hearing did concede to the aforesaid legal position as settled by the Apex Court in the above referred case and he also declared before the Court that if the reduction of the amount in the market value between the irrigated and non-irrigated is made as by 25%, the claimants/land owners have no objection for such purpose. Therefore, I find that no further discussion would be required in this regard. Hence, if the valuation is assessed of the non-irrigated land as that of Rs.12.75 as against the assessment made by the Reference Court in the impugned award at Rs.17/- per sq. mtrs. even for non-irrigated land, it

can be said that the Reference Court has committed error to that extent in assessment of the market value of the non-irrigated land.

7. It is not in dispute that the amount paid by the Special Land Acquisition Officer for the lands in question was at Rs.1.10 per sq. mtrs., since all the lands in the present cases were non-irrigated lands. Therefore, the claimants would be entitled to the additional compensation at the rate of Rs.11.65 for all the non-irrigated lands, which are under acquisition.

8. The other part of the judgement and award of the Reference Court so far it relates to awarding additional increase by awarding interest at the rate of 12% under Section 23(1)(a) and solatium at the rate of 30% and interest at the rate 9% per annum for the first year and 15% per annum for the subsequent period are not required to be interfered with, except to the extent that on account of the reduction of the market value from Rs.17/- to Rs.12.75 and the net additional compensation of Rs.11.65 per sq. mtrs., such amount shall proportionately get reduced.

9. In the result, the appeals are partly allowed. The impugned judgement and award of the Reference Court are modified to the effect that the respondents – original claimants would be entitled to the additional compensation of Rs.11.65 per sq. mtrs., for non-irrigated land with the proportionate benefit of 12% interest under Section 23(1)(a) per annum and solatium at the rate of 30% and interest at the rate of 9% for the first year and 15% for the subsequent years, as per the provisions of the Act.

10. Mr.Nanavati, learned Counsel appearing for the original claimants, states that the amount is not deposited with the Reference Court. Hence, considering the facts and circumstances, the amount shall be deposited within three months from the date of receipt of the order of this Court.

11. The appeals are partly allowed to the aforesaid extent. Decree accordingly. No order as to costs.

12.4.2007 **(Jayant Patel, J.)**

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